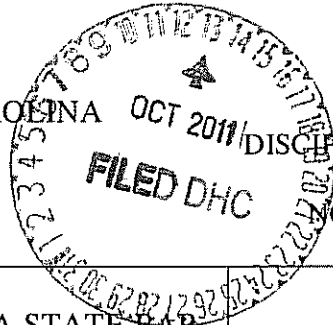


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
11 DHC 27

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

CAMERON M. FERGUSON, Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar (hereafter "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Cameron M. Ferguson (hereafter "Defendant" or "Ferguson"), was admitted to the North Carolina State Bar on 29 August 1998 and is an Attorney at Law subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the relevant period referred to herein, Ferguson was actively engaged in the practice of law and maintained a law office in Boone, Watauga County, North Carolina.

FIRST CLAIM FOR RELIEF

4. Paragraphs 1 through 3 are re-alleged and incorporated herein.

5. Ferguson represented the plaintiff in the Watauga County Superior Court case of *Small v. Pittman*.

6. Ferguson failed to appear for trial of the *Small* case on 17 November 2008 and failed to provide a sufficient explanation to the court for his absence.

7. The court ordered Ferguson to appear on 1 December 2008 and show cause why he should not be held in contempt of court for his failure to appear at the 17 November 2008 trial.

8. Ferguson willfully failed to appear on 1 December 2008 as required by the court's show cause order.

9. Ferguson's failures to appear violated the General Rules of Practice for Superior and District Courts.

10. After hearing on 4 December 2008, the court found Ferguson in contempt of court and censured Ferguson for violation of the Rules of Professional Conduct.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- a) By knowingly disobeying the court's show cause order court and failing to appear on 17 November 2008 and 1 December 2008, Ferguson knowingly disregarded an obligation under the rules of the tribunal in violation of Rule 3.4(c) and Rule 3.5(a)(4), committed criminal contempt in violation of Rules 8.4(b) and (d), and failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3.

SECOND CLAIM FOR RELIEF

11. Paragraphs 1 through 10 are re-alleged and incorporated herein.

12. Ferguson represented E. Mink in a personal injury case that resulted from an accident in June 2006.

13. Mink incurred approximately \$41,000 in medical expenses from the accident, some of which expenses were protected by medical liens.

14. Ferguson settled Mink's case for \$50,000.

15. On or about 20 November 2006, Ferguson paid Mink two-thirds of the \$50,000 settlement.

16. Ferguson paid the remaining one-third of the settlement to himself as a legal fee.

17. Ferguson failed to explain to Mink the effect of medical liens and the effect of non-payment of her medical bills.

18. Ferguson did not use any portion of the settlement proceeds to pay Mink's medical bills.

19. Ferguson also filed a claim with Mink's insurance company to recover pursuant to her uninsured motorist insurance.

20. In or about June 2007, Ferguson obtained \$36,000 on Mink's behalf from her insurance company.

21. Ferguson failed to disburse the proceeds received from Mink's insurance company to Mink until 19 August 2008.

22. Ferguson did not pay any of Mink's medical bills with the funds received from Mink's insurance company.

23. Ferguson failed to respond to Mink's inquiries about the status of the \$36,000 Ferguson collected from Mink's insurance company on her behalf.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- a) By failing to advise Mink about the effect of medical liens and nonpayment of her medical bills, Ferguson failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(b);
- b) By failing to respond to Mink's inquiries about the status of the \$36,000 payment from her insurance company, Ferguson failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- c) By failing to disburse the \$36,000 insurance proceeds to Mink or on her behalf, Ferguson failed to promptly pay to the client or third persons entrusted property belonging to the client in violation of Rule 1.15-2(m); and
- d) By failing to pay that portion of Mink's medical expenses that were protected by medical liens, Ferguson engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d).

THIRD CLAIM FOR RELIEF

24. Paragraphs 1 through 23 are re-alleged and incorporated herein.

25. Ferguson entered into a contingent fee agreement with C. Cox to negotiate on her behalf to reduce a CIGNA healthcare lien.

26. The agreed upon fee was 1/3 of the difference between the amount of the medical lien at the start of the representation and the reduced amount of the medical lien ultimately negotiated by Ferguson.

27. Cox deposited in trust with Ferguson the full amount she recovered in settlement of her personal injury claim with the expectation that a portion of these funds would be used to satisfy the CIGNA healthcare lien and to pay Ferguson's legal fee (if any) with the balance being returned to her.

28. CIGNA was represented by a debt collection agency: ACS.

29. On 11 December 2007 Ferguson sent a letter to ACS purporting to confirm ACS's verbal acceptance on behalf of CIGNA to reduce its \$73,465.56 medical lien to \$31,803.27. Ferguson enclosed with his December 11th letter a check for \$31,803.27 and instructions stating that ACS's deposit of the check would be deemed acceptance of \$31,803.27 as full satisfaction of CIGNA's healthcare lien.

30. ACS never deposited the \$31,803.27 check.

31. Instead, ACS sent Ferguson a letter dated 21 December 2007 stating that there had been no agreement to resolve the CIGNA healthcare lien though ACS did not reject Ferguson's offer to settle the lien for \$31,803.27.

32. Ferguson responded to ACS's letter by instructing ACS to return the \$31,803.27 check unless it accepted it as an accord and satisfaction of the CIGNA healthcare lien.

33. ACS did not return the check to Ferguson, nor did it cash the check confirming the accord and satisfaction.

34. Ferguson failed to inform Cox about the 21 December 2007 letter and failed to inform her that CIGNA did not cash the check he sent. Ferguson also failed to explain to Cox the effect of CIGNA's failure to cash the check.

35. Ferguson failed to obtain the uncashed check from CIGNA or to stop payment on the check.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- a) By failing to inform Cox that CIGNA failed to cash the check enclosed with his December 11th letter and failing to explain the effect of CIGNA's failure, Ferguson failed to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(b); and
- b) By failing to obtain from CIGNA the uncashed check or to stop payment on the uncashed check so that the balance of the settlement proceeds could be returned to Cox, Ferguson failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3.

FOURTH CLAIM FOR RELIEF

36. Paragraphs 1 through 36 are re-alleged and incorporated herein.

37. Ferguson represented T. Mahala in a worker's compensation matter.

38. Ferguson scheduled mediation for Mahala's case on 7 January 2010.

39. A few days before the 7 January 2010 mediation, Ferguson's secretary called Mahala to inform her that Ferguson would not attend the mediation.

40. Ferguson failed to contact Mahala for several weeks after this communication between his secretary and Mahala. In February 2010, Mahala called Ferguson to ask about the status of rescheduling the mediation.

41. Later that day, Ferguson left a message for Mahala stating that mediation had been rescheduled for 29 April 2010.

42. Upon information and belief, Ferguson did not perform any substantive work on Mahala's case from January 2010 through the date that he spoke with Mahala about rescheduling the mediation for her case.

43. On 28 April 2010, Ferguson called Mahala and told her that her case was ready for mediation on the following day. Upon information and belief, Ferguson had not prepared for Mahala's mediation.

44. Ferguson arrived 45 minutes late for the mediation.

45. During his presentation at the mediation, Ferguson stated that he did not have all of the documents he needed to make his presentation. Ferguson then walked out of the mediation room.

46. Ferguson returned to the mediation room approximately fifteen (15) minutes later, but was still unprepared for the mediation.

47. When the mediator asked Ferguson for a settlement demand, Ferguson asked Mahala for her weekly salary and age. This is information Ferguson should have obtained from Mahala prior to the mediation. Ferguson then offered to settle Mahala's case for \$250,000.

48. The mediator talked with counsel for the opposing party about Ferguson's offer. Within two minutes of his conversation with opposing counsel, the mediator returned to the mediation room and adjourned the mediation.

49. Upon information and belief, Ferguson failed to perform any substantive work on Mahala's behalf before mediation.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- a) By failing to perform any substantive work on Mahala's behalf before mediation, Ferguson failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3.

FIFTH CLAIM FOR RELIEF

50. Paragraphs 1 through 51 are re-alleged and incorporated herein.

51. Ferguson represented D. Olsen in a personal injury matter. Ferguson settled Olsen's case on or about 16 April 2010 for \$45,000, which amount was deposited into RBC bank trust account ending in no. 7848 ("Trust Account 1").

52. Current Chiropractic Clinic, PC ("Current Chiropractic") had a \$1,475 medical lien on Olsen's lawsuit proceeds.

53. Ferguson was out of the office when Olsen's case settled. He left management of his office and of Olsen's case to his office manager Pam Roark.

54. Beginning on or about 26 April 2010, Roark wrote checks on Olsen's behalf totaling approximately \$45,000, the total amount on deposit for Olsen in Trust Account 1.

55. On 3 May 2010, Roark prepared Trust Account 1 check no. 6038 payable to Current Chiropractic in the amount of \$1,475 in addition to the other checks she prepared that are referenced in the preceding paragraph.

56. Roark issued checks for a greater amount than that held in Trust Account 1 on Olsen's behalf.

57. On or about 19 May 2010, Ferguson transferred \$208,791.13 from Trust Account 1 to RBC Bank trust account ending in no. 5704 ("Trust Account 2"). After this transfer, the balance in Trust Account 1 was \$6.98.

58. Ferguson's transfer of funds from Trust Account 1 to Trust Account 2 occurred before Current Chiropractic presented check no. 6038 for cashing. Therefore, Olsen's Trust Account 1 client balance was not overdrawn though Roark issued checks for a greater amount than that held for Olsen in Trust Account 1.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- a) By failing to supervise Roark in her handling of the Olsen settlement proceeds resulting in Roark issuing checks on Olsen's behalf for a greater amount than that Ferguson held for Olsen in Trust Account 1, Ferguson failed to make reasonable efforts to ensure that a non-lawyer's conduct was compatible with a lawyer's professional obligations in violation Rule 5.3(a)(b).

SIXTH CLAIM FOR RELIEF

59. Paragraphs 1 through 57 are re-alleged and incorporated herein.

60. Ferguson began representing M. Fisher in a personal injury matter on or about 10 May 2007.

61. On or about 9 April 2010, Ferguson settled Fisher's case for \$21,000. Ferguson held Fisher's settlement proceeds in Trust Account 1 pending her execution of the settlement agreement.

62. Ferguson was out of the office when Fisher's case settled. He left management of his office and Fisher's case to office manager Pam Roark.

63. Fisher was entitled to \$14,000 of the settlement proceeds. The remaining one third was for Ferguson's legal fee.

64. Roark disbursed Fisher's portion of the settlement proceeds in two installments: (i) check no. 6004 for \$7,000 and (ii) check no. 5349 for \$7,000.

65. Trust account check no. 6004 cleared the Trust Account 1 on 23 April 2010. Trust Account 1 check no. 5349 was returned to Fisher unpaid and marked as "refer to maker."

66. On or about 19 May 2010, Ferguson transferred \$208,791.13 from Trust Account 1 to Trust Account 2. After this transfer, the balance in Trust Account 1 was \$6.98.

67. Upon information and belief, because of Ferguson's transfer of funds from Trust Account 1 to Trust Account 2 (which is referenced above in the Fifth Claim for Relief) there were insufficient funds in Trust Account 1 to pay check no. 5349 at the time Fisher presented the check for payment.

68. After Fisher contacted Ferguson's office about the unpaid check, Roark prepared a replacement check for Fisher: check no. 6040 in the amount of \$7,000.00 dated 11 May 2010.

69. When Fisher presented check no. 6040 to the bank for payment, it was returned due to insufficient funds.

70. Ferguson failed to supervise Roark's disbursement of Fisher's settlement proceeds.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- a) By failing to properly supervise Roark's disbursement of Fisher's settlement proceeds, Ferguson failed to make reasonable efforts to ensure that a non-lawyer's conduct was compatible with a lawyer's professional obligations in violation Rule 5.3(a)(b); and
- b) By failing to promptly disburse Fisher's settlement proceeds to her, Ferguson failed to promptly pay or deliver to the client entrusted property belonging to the client and to which the client is currently entitled in violation of Rule 1.15-2 (m).

SEVENTH CLAIM FOR RELIEF

71. Paragraphs 1 through 68 are re-alleged and incorporated herein.

72. Ferguson represented T. Coe in a personal injury matter.

73. On or about 28 March 2008 Ferguson settled Coe's case for \$24,000.

74. After making all other disbursements on Coe's behalf, Ferguson held \$7,783.03 in trust for payment to Medicaid.

75. Ferguson failed to make any payments to Medicaid on Coe's behalf.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- a) By failing to promptly pay Medicaid with the money withheld from Coe's settlement proceeds, Ferguson failed to promptly pay or deliver to the a third party on behalf of the client entrusted property belonging to the client in violation of Rule 1.15-2 (m) and failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3.

EIGHTH CLAIM FOR RELIEF

76. Paragraphs 1 through 73 are re-alleged and incorporated herein.

77. On or about 24 November 2008, Momma Ferguson issued Trust Account 1 check no. to A/C Advice of South Florida, Inc. for \$97.75. Momma Ferguson improperly issued payment of Ferguson's Florida rental property expense from Trust Account 1 instead of from Ferguson's personal account.

78. Neither Momma Ferguson nor Ferguson had \$97.75 in Trust Account 1. Momma Ferguson paid A/C Advice from Trust Account 1 using entrusted client funds that did not belong to Momma Ferguson, A/C Advice or Ferguson.

79. On or about 13 April 2010, Pam Roark issued Trust Account 1 check no. 5340 to herself for \$1,500. Roark improperly issued payment of her salary from the Trust Account instead of Ferguson's operating account.

80. Neither Roark nor Ferguson had \$1,500 in Trust Account 1. Roark paid herself \$1,500 from Trust Account 1 using entrusted client funds that did not belong to Roark or to Ferguson.

81. On or about 11 May 2010, Roark issued Trust Account 1 check no. 6036 for \$480 to Sam Potter, another Ferguson employee. Roark improperly issued

payment of Potter's salary from Trust Account 1 instead of Ferguson's operating account.

82. Neither Ferguson nor Potter had \$480 in Trust Account 1. Potter's \$480 salary was paid from Trust Account 1 using entrusted client funds that did not belong to Potter or to Ferguson.

83. Ferguson was out of the office when Roark issued these payments. He left management of his office to office manager Roark and gave her full access to Trust Account 1 in his absence.

84. On 20 April 2010, Ferguson was required to hold \$263,044.26 in Trust Account 1 for his clients. However, Ferguson only had \$257,259.13 in Trust Account 1 on that date.

85. From 20 April 2010 through 26 May 2010 Ferguson had less money in his trust accounts than he was supposed to be holding in trust for his clients.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- a) By failing to properly supervise Roark's handling of the Trust Account, Ferguson failed to make reasonable efforts to ensure that a non-lawyer's conduct was compatible with a lawyer's professional obligations in violation of Rule 5.3(a)(b); and
- b) By allowing the balance of his trust accounts to fall below the amount that he was required to hold in trust on behalf his clients, allowing Trust Account funds to be used to pay employees' salaries and allowing Momma Ferguson to use Trust Account funds to pay Ferguson's personal expense, Ferguson used entrusted property for the personal benefit of one other than the legal or beneficial owner without authorization to do so in violation of Rule 1.15-2(j); and
- c) By allowing Momma Ferguson to have access to and sign checks for Trust Account 1, Ferguson failed to maintain entrusted property separate from the property of the lawyer in violation of Rule 1.15-2(a).

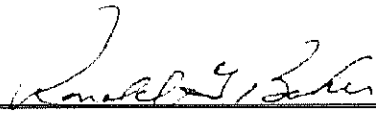
WHEREFORE, Plaintiff prays that

1. Disciplinary action be taken against Defendant in accordance with N.C.G.S. § 84-28 (c) and 27 N.C.A.C. 1B § .0114 as the evidence on hearing may warrant;

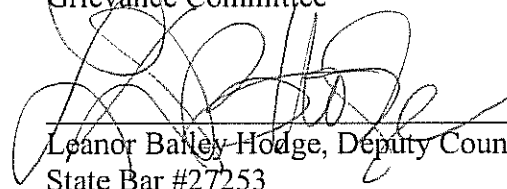
2. Defendant be taxed with the costs and fees permitted by law in connection with this proceeding; and

3. For such other and further relief as the Hearing Panel deems appropriate.

This the 12th day of October, 2011.



Ronald G. Baker, Chair
Grievance Committee



Leann Bailey Hodge, Deputy Counsel
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